

FILED  
STEVEN W. KAHRE  
NOV - 8 2012  
CIRCUIT CLERK  
LAWRENCE COUNTY, MO

Case No. 12LW-CC00072

The Court has read Plaintiff's Petition for Injunctive Relief and Civil Penalties, in which Plaintiff alleges that Defendants violated the Missouri Clean Water Law. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the issues raised by the Petition and that the parties want to terminate this controversy and consent to the entry of this judgment without trial.

Each term of this Judgment shall be enforceable by further order of this Court, and to that end, the Court retains jurisdiction of the matter in order to enforce each and every term of this Consent Judgment. The Court finds that the terms of this Consent Judgment protect the public's interest.

The parties have consented to the entry of this Consent Judgment, and as such this Court hereby ORDERS, ADJUDGES AND DECREES that:

### **I. Objectives of the Parties**

1. The objectives of the parties to this Consent Judgment are to protect human health and the environment and to resolve allegations contained in Plaintiff's Petition.

### **II. Definitions**

2. Terms used herein shall have the same meaning as provided in the Missouri Clean Water Law Chapter 640 RSMo and the regulations adopted thereunder. In addition, the following terms are specifically defined:

a. "Consent Judgment" means this Consent Judgment and all attachments, which are included by reference and fully enforceable as a term of the judgment.

b. "Defendants" means Benjamin Borntreger and Moses Borntreger.

c. "Department" means the Missouri Department of Natural Resources.

d. "Facility" means the single cell wastewater treatment lagoon serving the Aurora Grand Meat Processing Company, located at 16686 Highway 39, Verona, Lawrence County, Missouri.

e. "Plaintiff" and "State" means the State of Missouri on the relationship of Attorney General Chris Koster and the Department.

### **III. Jurisdiction and Venue**

3. This Court has jurisdiction over the subject matter and the parties in this case pursuant to § 644.076.1 RSMo.<sup>1</sup> Venue is proper in this Court pursuant to § 644.076.1 RSMo because the Defendants' conduct giving rise to this action took place in Lawrence County.

### **IV. Parties Bound**

4. The provisions of this Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of the parties to this action or their agents, servants, employees, heirs, successors,

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<sup>1</sup> All statutory references shall be to the Missouri Revised Statute 2010 unless specifically stated otherwise.

and assigns. Defendants shall provide a copy of this order to all persons or entities retained to perform work required by this order.

#### **V. Satisfaction and Reservation of Rights**

5. Upon the completion of all terms of this Consent Judgment, including the payment of civil penalties, completion of all schedules of compliance and the payment of any stipulated penalties due under the terms of this Consent Judgment, Defendants are relieved of liability for the violations alleged in the petition.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Clean Water Law or its implementing regulations, or under other federal or state laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

a. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for violations of the Missouri laws or regulations that were not alleged in the petition.

c. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of the Missouri Clean Water Law or regulations promulgated under its authority.

d. The State of Missouri further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' facility, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

## **VI. Injunctive Relief**

7. Defendants agree and are ordered to comply with all State of Missouri environmental statutes and all implementing regulations for any and all future activities in the State of Missouri.

8. In compromise and satisfaction of the allegations set forth in the State's Petition, Defendants agree to complete the following schedule of compliance to bring the Facility into compliance with the Missouri Clean Water Law:

A. Beginning on the effective date of this Consent Judgment and continuing until the Department issues a general Missouri State Operating Permit to Defendants, Defendants shall

pump and haul wastewater generated by Aurora Grand Meat Company to a wastewater treatment facility with the capacity to accept the load so as to prevent any discharge of water contaminants from the Aurora Grand Meat Company. Defendants shall maintain pumping records and receipts for production to the Department upon request. The pumping records shall include the date wastewater was pumped, number of gallons pumped, and the name of the facility accepting the wastewater.

- B. Within sixty (60) days of the effective date of this Consent Judgment Defendants shall submit to the Department for review and approval:
  - i. A complete application for a construction permit including a completed Form A, a completed Form I, and engineering plans and specifications signed and sealed by a professional engineer licensed to practice in the State of Missouri for a holding structure for process wastewater generated by the Aurora Grand Meat Company with all necessary appurtenances and pipes for collection of the process wastewater and a land application system for applying process wastewater generated by the Aurora

Grand Meat Company. Defendants shall submit with the construction permit application an application fee in the amount of seven hundred fifty dollars (\$750.00).

- ii. A closure plan for the Facility, developed in accordance with Department Guidelines, described in Standard Conditions for National Pollutant Discharge Elimination System Permits, Part III, Section I, under Closure Requirements.

- C. Within fifteen (15) days receipt of Department comments on the engineering plans and specifications referenced in Section VI, paragraph A i and the closure plan referenced in Section VI, paragraph A ii, the Defendants shall respond in writing and adequately address, to the Department's satisfaction, all of the Department's comments on the engineering plans and specifications and the closure plan;
- D. Within thirty (30) days from the date the Department issues the construction permit, Defendants shall submit to the Department for review and approval a complete application for a MO-G822000 General Operating Permit for Meat Processors and a Land Application Management Plan prepared pursuant to the Best Management Practices and

other requirements contained in the General Permit.

Defendants shall submit with the application for a General Operating Permit for Meat Processors a permit fee in the amount of one hundred fifty dollars (\$150.00).

- E. Within fifteen (15) days receipt of Department comments on the Land Application Management Plan referenced in Section VI, paragraph C, Defendants shall respond in writing and adequately address, to the Department's satisfaction, all of the Department's comments on the Land Management Plan.
- F. Within ninety (90) days from the date the Department issues the construction permit, Defendants shall complete construction of the holding structure and land application system in accordance with Department approved engineering plans and specifications;
- G. Within fifteen (15) days of completing construction of the holding structure and land application system, Defendants shall submit to the Department a Statement of Work Completed Form, signed, sealed and dated by a professional engineer registered in the State of Missouri certifying that the project was completed in accordance with Department approved plans and specifications;

- H. Within one hundred and twenty (120) days from the date the Department issues the construction permit, Defendants shall complete closure of the Lagoon in accordance with the Department approved closure plan;
- I. Immediately upon issuance of a general Missouri State Operating Permit to Defendants by the Department, Defendants shall collect and land apply all process wastewater generated by the Aurora Grand Meat Company pursuant to all requirements of the issued Missouri State Operating Permit.

**I. Civil Penalty**

9. Defendants consent to the entry of judgment in favor of the State of Missouri for a civil penalty of \$5,000.00. Defendants hereby authorize entry of this judgment against them and in favor of the State of Missouri for this sum. The parties agree to suspend collection of \$2,000.00 of this civil penalty provided that Defendant comply with the terms of this Consent Judgment for a period of two-years following Defendants' signature of this Consent Judgment. If the suspended civil penalty becomes due and owing, Defendants shall pay according to the terms set forth in paragraph 10 within fifteen days demand by the Attorney General's Office.

10. Defendants agrees to pay the \$3,000.00 up-front civil penalty by check made payable to the "*State of Missouri (Lawrence County)*" within thirty (30) days of the entry of this Consent Judgment by mailing the same to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

### **IX. Stipulated Penalties**

11. In the event that Defendants fail to comply with the requirements set forth in this Consent Judgment, Defendants shall be liable for stipulated penalties in accordance with the following schedule :

- A. \$250.00 per day for each day of each violation up to thirty days.
- B. \$500.00 per day for each day of each violation, from thirty-one days to sixty days.
- C. \$1,000.00 per day for each day of each violation, beyond sixty days.

Stipulated penalties shall be due and payable within ten days of demand being made by the Attorney General's Office. Defendants shall pay stipulated penalties by check made payable to the "*State of Missouri (Lawrence County)*" and mailed, along with a copy of the State's stipulated penalty demand letter, to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. That check

will be deposited and processed in accordance with the consent judgment and Missouri law.

12. The inclusion of stipulated penalty provisions in this Consent Judgment, and the payment of stipulated penalties, does not limit the State's ability to pursue other penalties for the same acts; where a violation of this Consent Judgment also constitutes a violation of a statute, stipulated penalties may be collected in addition to statutory penalties imposed for those violations.

#### **XIV. Modification**

13. Except as otherwise specified herein, this Consent Judgment may be modified or amended only upon written agreement by and among the parties, their successors and assigns and with the approval of the Court. All modifications shall be in writing and filed with the Court.

#### **XV. Costs**

14. Defendants shall pay all court costs in this action.

The parties hereby consent to this Consent Judgment through their duly authorized representatives as indicated below.

By:   
Benjamin Borntreger  
Aurora Grand Meat Company

Date: 10-4-12

By: Moses Bornotreger  
Moses Bornotreger  
Aurora Grand Meat Company

Title: Manager

Date: 10-4-12

MISSOURI ATTORNEY GENERAL'S OFFICE

By: Jessica L. Blome  
Jessica L. Blome  
Assistant Attorney General

Date: 10/9/12

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: Alan J. Reinkemeyer  
for Alan J. Reinkemeyer, Acting Director  
Division of Environmental Quality

Date: 10/18/2012

SO ORDERED.

Alan Blankenships  
Circuit Judge

Date: November 8, 2012

CERTIFICATE OF TRUE COPY  
STATE OF MISSOURI

} ss.

County of Lawrence, I Steven W. Kahre, the duly elected, qualified and acting Clerk of the Circuit Court of Lawrence County, Missouri, hereby certify under my hand and seal of the office that the above, and foregoing is a true and complete copy of this original Consent Judgment now of record and on file in my office

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office, in Mt. Vernon, Lawrence County, Missouri this 9th day of November 2012

Steven W. Kahre  
Circuit Clerk  
Nancy Brown  
Deputy Clerk